09-07-05 AF/3673

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Date: September 6, 2005 Sandy Rork

Sandy Rork

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
William T. Carpenter

Application Serial No.: 09/773,815

Filed: January 31, 2001

For: METHOD OF MODIFYING THE AXIS OF ROTATION OF THE EARTH

Group Art Unit: 3673

Examiner: J.J. Kreck

Atty. Dkt. No.: P01426US2

REPLY BRIEF

Board of Patent Appeals and Interferences
U. S. Patent and Trademark Office
Washington, D.C. 20231

This Reply Brief is filed in response to the Examiner's Answer mailed on July 5, 2005, regarding the above-captioned application. Pursuant to 37 C.F.R. 1.17(c), Appellant authorizes the Commissioner to deduct the fee of $155.00 for the filing of a brief in support of an appeal by a small entity from the Fulbright & Jaworski L.L.P. Deposit Account No. 06-2375 under matter P01426US2. It is believed that no other fee is due; however, should any other fees under 37 C.F.R §§ 1.16 to 1.21 be deemed necessary for any reason relating to the enclosed materials, the Commissioner is hereby authorized to deduct said fees from said account.

Appellant does not request Oral Argument.

Dated: September 6, 2005

Respectfully submitted,

By John Mings / Brian Truby w/permission

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REPLY BRIEF

MS Appeal Brief
Commissioner of Patents
Washington, D.C. 20231

Sir:

Appellant hereby submits an original and two copies of this Reply Brief to the Board of Patent Appeals and Interferences in response to the final Office Action dated May 4, 2004 (the "Action").

The fee for filing this Reply Brief is $155.00 for a small entity. The Commissioner is hereby authorized to deduct this fee from the Fulbright & Jaworski L.L.P. Deposit Account No. 06-2375 under matter P01426US2. Please date stamp and return the attached postcard as evidence of receipt.

Appellants rely on the arguments set forth in the Appeal Brief filed on April 11, 2005 and add the following comments with respect to the Examiner's Answer ("Answer").

I. REAL PARTY IN INTEREST

The real party in interest remains the inventor, William T. Carpenter.

II. RELATED APPEALS AND INTERFERENCES

There are still no related appeals or interferences.

III. STATUS OF THE CLAIMS

A. Total Number of Claims in Application

There is a total of 10 claims in the application, which are identified as claims 11-20.

B. Status of All the Claims

1. Claims canceled: Claims 1-10.
2. Claims withdrawn from consideration but not canceled: NONE.
3. Claims pending: Claims 11-20.
4. Claims allowed: NONE.
5. Claims rejected: Claims 11-20.

A copy of the pending claims is attached as Appendix 1.

IV. STATUS OF AMENDMENTS

There are still no outstanding amendments in the pending claims.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 11 is the only independent claim pending in the application. It relates to a method of modifying the earth-rotation vector in relation to the body of the planet or in inertial space by redistributing the mass in/or/on the crust of the earth. 4:11-13; 7:1-11. Such redistribution will change the center of mass of the Earth thereby causing a change in the earth-rotation vector. 4:13-14.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are presented for review on appeal:

1. Claims 11-20 have been rejected as unpatentable under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

2. Claims 11-20 have been rejected under 35 U.S.C. § 103 as obvious and unpatentable over Chao, B.F., Anthropogenic impact on global geodynamics due to water impoundment in major reserves, Geophys. Res. Lett., 22, 3532, 1995 (hereinafter, "Chao") in view of JOHN WHITE, POLE SHIFT: PREDICTIONS AND PROPHECIES OF THE ULTIMATE DISASTER 80-81, 180-81 (Doubleday & Co., Inc. 1980) ("White") and Hugh Auchincloss Brown, Cataclysms of the Earth 151-56 (Twayne Publishers, Inc. 1996) ("Brown").

VII. ARGUMENT

A. Substantial Evidence Required to Uphold the Examiner's Position

As an initial matter, Appellant notes that findings of fact and conclusions of law by the U.S. Patent and Trademark Office must be made in accordance with the Administrative Procedure Act, 5 U.S.C. § 706(A), (E), 1994. *Dickinson v. Zurko*, 527 U.S. 150, 158 (1999). Moreover, the Federal Circuit has held that findings of fact by the Board of Patent Appeals and Interferences must be supported by "substantial evidence" within the record. *In re Gartside*, 203 F.3d 1305, 1315 (Fed. Cir. 2000). In *Gartside*, the Federal Circuit stated that "the 'substantial evidence' standard asks whether a reasonable fact finder could have arrived at the agency's decision." *Id.* at 1312.

Accordingly, it necessarily follows that an Examiner's position on Appeal must be supported by "substantial evidence" within the record in order to be upheld by the Board of Patent Appeals and Interferences.

B. 35 USC §112, first paragraph--Enablement

The Examiner continues to reject claims 11-20 under 35 U.S.C. 112, first paragraph, because the specification allegedly does not enable one of skill in the art to make and use the invention commensurate in scope with the claims.

Claim 11 is the sole independent claim. It calls for "calculating a moment of stability." The Examiner correctly points out that the specification does not disclose any equations or

methods to perform such a calculating step. However, the Examiner fails to appreciate that methods and equations for calculating a moment of stability are well-known. A person of ordinary skill in the art could perform such a calculating step without undue experimentation.

Claim 11 also calls for a step of "positioning the mass." The examiner recites that the specification does not disclose how the mass would be captured and placed in predetermined locations. Again, many methods are known for moving mass of varying sizes. The choice of which exact method to use lies with the user of the method. A person of ordinary skill in the art could easily ascertain the appropriate method and equipment for performing the step, depending on what type of mass is involved, the distance it must be moved, its starting and ending locations, etc.

Applicant recognizes that, depending on the result sought, performing the method could be an enormous undertaking, possibly requiring large amounts of money, time, equipment and personnel. However, the Examiner appears to confuse difficulty to carry out the claimed process with difficulty of one of ordinary skill in the art to understand how to carry out the process. The specification would enable one of ordinary skill in the art to carry out the step of "positioning the mass" without undue experimentation.

Finally, the Examiner argues that the specification fails to give any examples of how much mass would be required to make an appreciable change in the axis of rotation. However, the application states that "[t]he amount of mass altered would be dependent upon the desired change to the Earth's center of mass and consequent changes to the axis of rotation. The desire is subjective to the user of the method and depends on the result sought." (Page 4, ll. 25-28). As Applicant points out, "[s]uch result can be reasonably determined by one of ordinary skill in the art." (Page 4, ll. 28-29).

The Examiner has the burden to establish a basis for the enablement rejection. MPEP § 2164.04. The Examiner has failed to meet that burden. There is nothing in the record to support the Examiner's implied argument that one of ordinary skill in the art could not calculate a moment of stability, position the mass, or determine the amount of mass to shift, without undue experimentation. In fact, the specification does enable one of ordinary skill in the art to practice the claimed method without undue experimentation. The Examiner's rejection based upon Applicant's alleged failure to comply with the enablement requirement is thus incorrect.

C. 35 USC § 103(a) — Obviousness

The Examiner continues to reject claims 11-20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chao (Anthropogenic impact on global geodynamics due to reservoir water impoundment) in view of White (Pole Shift: predictions and prophecies of the ultimate disaster); and Brown (Cataclysms of the Earth). Applicant maintains that the Examiner failed to make out a *prima facie* case of obviousness. Without a *prima facie* case of obviousness, any rejection under 35 U.S.C. § 103 is improper and should be overturned. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988).

Chao teaches that water impoundment in large, artificial reservoirs has altered living environment throughout history (Introduction, first paragraph). Specifically, it teaches that the impoundment has changed the moment of inertia, and hence the rotation of the Earth under the conservation of angular momentum (Introduction, third paragraph).

The Examiner concedes that Chao fails to disclose the steps of selecting a desired character of rotation; calculating a moment of stability; determining a position and mass of a compensating substance; and positioning the mass. In fact, Chao merely recognizes the problem of the Earth's changing rotation. It does not contemplate any solution to the problem. The Examiner does not point to any evidence in the record of any Chao teaching that may be combined with any other reference to render the claimed subject matter obvious.

White & Brown each seem to teach a desire to prevent pole shift. However, neither contemplates a solution to a change in the Earth's rotation comprising altering the Earth's center of gravity by shifting mass.

Chao, White, & Brown all recognize that, for various reasons, the Earth's rotation is slowly changing. Each also seems to recognize that the shift in rotation alters the Earth's living environment. However, none contemplates altering the Earth's center of mass by shifting mass to desired points. One of ordinary skill in the art would not be motivated to combine the teachings of Chao with those of White and/or Brown to solve the problem of the Earth's changing rotation in a manner contemplated by Applicant. The Examiner's rejection based upon 35 U.S.C. § 103(a) is thus improper.

VIII. CONCLUSION

Appellant has provided arguments that overcome the pending rejections. Appellant respectfully submits that the Action's conclusions that the claims should be rejected are unwarranted. It is therefore requested that the Board overturn the rejection of the Action.

Please date stamp and return the enclosed postcard to evidence receipt of this document.

Dated: September 6, 2005

Respectfully submitted,

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APPENDIX 1

PENDING CLAIMS

11. A method of modifying the axis of rotation of a planet comprising the steps of:

measuring the mass of a planet;

determining the center of mass of the planet;

characterizing the axis of rotation of the planet;

selecting a desired character of rotation;

calculating a moment of stability required to cause the desired character of rotation;

determining a position and a mass of a compensating substance sufficient to effect the moment of stability; and

positioning the mass in the position.

12. The method of claim 11 in which the position of the compensating substance is positioned an underground cavity.

13. The method of claim 11 in which the position of the compensating substance is positioned in an above ground cavity.

14. The method of claim 11 in which the substance is solid.

15. The method of claim 11 in which the substance is a liquid.

16. The method of claim 12 in which the substance is a liquid.

17. The method of claim 13 in which the substance is a liquid.

18. The method of claim 15 in which the liquid is water.

19. The method of claim 16 in which the liquid is water.

20. The method of claim 17 in which the liquid is water.

APPENDIX 2

EVIDENCE

None.

APPENDIX 3

RELATED PROCEEDINGS

None.